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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:) CITATION INCLUDING:
)
THE COMMISSIONER OF BUSINESS) (1) DESIST AND REFRAIN ORDER
OVERSIGHT,)
) (2) ASSESSMENT OF ADMINISTRATIVE
Complainant,) PENALTIES
)
v.) (3) CLAIM FOR ANCILLARY RELIEF AND
) COSTS
GUANGHUO CHEN, TOMII FRANCHISING,)
INC.. CHRISTOPHER CONNER, and)
CONNER AND ASSOCIATES, LLC (D/B/A)
FRANCHISE MARKETING SYSTEMS),)
)
Respondents.)

Jan Lynn Owen, the California Commissioner (“Commissioner”) of the Department of Business Oversight (“Department”), finds the following:

I
INTRODUCTION

1. At all relevant times, Tomii International, Inc. is an active status California corporation with a principal place of business at 15724½ Hacienda Heights, California 91745. Tomii International, Inc. was created on August 27, 2007.

2. At all relevant times, Guanghuo Chen (“Chen”) is the sole owner, operator and registered agent of Tomii International, Inc.

3. At all relevant times, Tomii Massage Franchising, Inc. (“Tomii” or “Franchisor”) is an active status California corporation with a principal place of business at 120 North Tustin Avenue, Anaheim, California 92807. Franchisor was created less than a year ago, on July 2, 2014.

4. At all relevant times, Chen is the sole owner, operator and registered agent of Franchisor. Chen is also the only employee of Franchisor.

5. At all relevant times, Christopher Conner (“Conner”) is the President and owner of Conner and Associates, LLC, and a “control” person of Conner and Associates, LLC. “Control” is defined by section 160. Conner and Associates, LLC, does business under the name “Franchise Marketing Systems.” Hereinafter, Conner and Associates, LLC, will be referred to as “Franchise Marketing Systems.” Franchise Marketing Systems maintain a website at www.franchisemarketingsystems.com.

6. The Commissioner is the head of the Department of Business Oversight and is responsible for administering and enforcing the California Franchise Investment Law, and registering the offer and sale of franchises in California, pursuant to section 31000 et seq.

7. To register a franchise, a franchisor must file a Uniform Franchise Disclosure Document (“Disclosure Document”) with the Department for review and approval, in accordance with sections 31111 and 31114.

8. The franchisor must provide copies of the registered Disclosure Document and all proposed agreements relating to the sale of the franchise to a prospective franchisee at least 14 days prior to executing any binding franchise or other agreement, or prior to receiving any consideration, whichever occurs first, as required by section 31119.

9. The disclosure requirements of the Franchise Investment Law are intended to avoid misrepresentations and to provide prospective franchisees with facts upon which to make an informed decision to purchase a franchise, as stated in section 31001.

II STATEMENT OF FACTS

A.

Previous Actions Against Conner and Franchise Marketing Systems

10. On December 1, 2014, the Department issued a Citation against Conner and Conner's company, Franchise Marketing Systems, which included a desist and refrain order, an assessment of administrative penalties and a claim for ancillary relief (the "Citation"). The Citation recited facts supporting the Commissioner's conclusion that Conner and Franchise Marketing Systems had violated the California Franchise Investment law (Corporations Code § 31000, et seq.) by offering and selling unregistered franchises in this state in violation of Corporations Code section 31110 and by making those offers and sales by means of written or oral communications which include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in violation of Corporations Code section 31110.

11. Conner acknowledged receipt of the Citation, along with other accompanying documents, on December 30, 2014. Conner never requested a hearing on the Citation and paid \$10,000 in administrative penalties and fees that were assessed against him to the Department on January 27, 2015. Consequently, the Citation became a final order by March 2, 2015 pursuant to Corporations Code section 31406.

12. On March 12, 2015, Gary Zyzna filed suit against Conner and Franchise Marketing Systems in the Court of Common Pleas for Mahoning County, Ohio, alleging violations of Ohio franchise law that relate to the subject of the Department's Citation (the "Ohio Complaint").

13. Conner and Franchise Marketing Systems were served with the Ohio Complaint on March 21, 2015.

14. The litigation involving the Ohio Complaint is currently pending in the United States District Court for the Northern District of Ohio (Case No. 4:15-cv-00749-CAB) after having been removed from state court.

B.

Conner's pre-registration involvement with Tomii

1
2 15. On July 6, 2014, Conner posted the following statement on the Franchise Marketing
3 Systems website and linked to the following message on the Facebook profile of Franchise
4 Marketing Systems (the spelling and formatting are shown as posted in the statement on the
5 website):

6
7 Tomii Massage Franchise: A Profitable, Simple Business Model that
8 offers Great Massage Services at a Reasonable Price. Tomii has brought
the East to the West by delivering ancient Chinese wellness and massage
techniques to consumers throughout Southern California.

9
10 The Tomii Massage franchise model will be launching this year to markets
11 throughout the United States offering a low investment massage franchise
at under \$55k total investment to open a location. The Tomii franchise
model fits a unique market segment and offers enormous value to both the
franchise investor and the consumer.

12
13 Tomii was recently featured in several Chinese franchise publications for
the recent launch and franchise development in the U.S.:

14
15 **For more information on the Tomii Massage Franchise Model,
contact us!**

16 16. The statement on Franchise Marketing Systems' website also embedded a YouTube
17 video, which was a recording of a news report on a Chinese language television channel. The news
18 report stated that Chen would begin offering franchises of his single, existing massage and wellness
19 center. Devin Conner, Conner's brother, provides an interview in the news report in which he
20 states that Franchise Marketing Systems is "now starting to develop the [Tomii] brand into an
21 entirely separate market and that is the franchise industry." In the news report, Chen also states his
22 desire to open new franchises.

23 C.

24 Tomii's Franchise Registration Application

25 17. On September 15, 2014, Tomii filed a franchise registration with the Department
26 ("Registration Application").
27
28

1 18. At the time it filed its Registration Application, Tomii had only been in existence for
2 one full month. Tomii's only owner, who was also its only employee, had no prior franchise
3 experience. Tomii only had \$1,000.00 in capitalization.

4 19. Tomii's Registration Application was submitted to the Department by Conner and
5 Franchise Marketing Systems. Conner is not an attorney. Rather, Franchise Marketing Systems
6 markets itself on its website as "the only full service franchise consulting agency offering marketing
7 and sales support to its clients."

8 20. The Department's franchise registration application requires franchisor applicants
9 identify all persons acting as an officer or director of the franchisor. Corp. Code §§ 31111, 31114;
10 10 C.C.R. §§ 310.111, 310.114.1.

11 21. Neither Conner nor Franchise Marketing Systems was identified in Tomii's
12 Registration Application.

13 22. The Department also requires franchisor applicants to disclose any persons who will
14 assist the franchisor in offering and selling franchises in a separate form attached to the franchisor's
15 registration application, a form titled the Franchise Seller Form. Corp. Code §§ 31111, 31114; 10
16 C.C.R. §§ 310.111, 310.114.1.

17 23. The Franchise Seller Form, question 2. asks the following question in regards to any
18 person identified in the form:

19
20 Has an administrative, criminal or material civil action pending against
21 that person alleging a violation of franchise, antitrust or securities law, or
22 alleging fraud, unfair or deceptive practice, or any comparable
23 allegations?

24 Yes_____ No _____

25 ***

26 Is subject to a currently effective injunction or restrictive order or decree
27 resulting from a pending or concluded action brought by a public agency
28 and relating to the franchise, or to a Federal, State or Canadian franchise,
 securities, antitrust, trade regulation or trade practice law?

 Yes_____ No _____

24. Tomii's Registration Application did not include did not include a Franchise Seller Form. Thus, in Tomii's Registration Application, neither Conner nor Franchise Marketing Systems were disclosed as a seller of Tomii's franchises.

25. On February 11, 2015, 149 days after the Registration Application was first filed with the Department, Conner submitted a Franchise Seller Form, identifying himself as a person who will solicit, offer or sell Tomii franchises in this state.

26. In the Franchise Seller Form, Conner answered "No" to each of the two questions which asked Conner to disclose pending and currently effective administrative orders or decrees, as identified in paragraph 23 above.

27. As of the present date, neither Conner nor Tomii has updated the Franchise Seller Form to disclose the Citation or the Ohio Complaint.

28. During the application review process, the Department requested a copy of all agreements between Tomii and Conner or Franchise Marketing Systems.

29. Tomii, through Conner, submitted at least four different agreements over the course of several months. Each agreement was represented as final and effective. However, there were material differences between all four and the agreements often contradicted each other. For example, some of the agreements were signed and dated; some were not. Some involved Franchisor as a party to the contract; some did not. Worse, some of the agreements pre-dated before Franchisor's existence; some were not. And most importantly, only the last of the four agreements submitted to the Department disclosed the actual franchise sales role that Conner and Franchise Marketing Systems would play.

30. When the Department sought clarity on which agreement was the effective agreement and why the agreements differed, Conner admitted to altering the agreements after the fact.

III
CITATION AND DESIST AND REFRAIN ORDER
Violation of Corporations Code Section 31200

31. Corporations Code section 31123 provides, in relevant part:

A franchisor shall promptly notify the commissioner in writing, by an application to amend the registration, of any material change in the information contained in the application as originally submitted, amended or renewed.

32. Corporations Code section 31200 provides:

It is unlawful for any person willfully to make any untrue statement of a material fact in any application, notice or report filed with the commissioner under this law, or willfully to omit to state in any such application, notice, or report any material fact which is required to be stated therein, or fail to notify the commissioner of any material change as required by Section 31123.

33. Based upon the foregoing findings, the Commissioner is of the opinion that Guanhua Chen, Tomii Franchising, Inc., Christopher Conner, and Conner and Associates, LLC (D/B/A Franchise Marketing Systems), in violation of section 31200, willfully made an untrue statement of a material fact in an application with the Commissioner, omitted to state a material fact which is required to be stated in an application with Commissioner, or failed to notify the Commissioner of any material change in an application. Pursuant to section 31406, Guanhua Chen, Tomii Franchising, Inc., Christopher Conner, and Conner and Associates, LLC (D/B/A Franchise Marketing Systems) are hereby cited and ordered to desist and refrain from further violations of Corporations Code section 31200.

34. This order is necessary, in the public interest, for the protection of investors and franchisees and consistent with the purposes, policies and provisions of the Franchise Investment Law (Corporations Code § 31000, *et seq.*) (the “Franchise Investment Law”).

IV
CITATION AND DESIST AND REFRAIN ORDER
Violation of Corporations Code Section 31204

35. Corporations Code section 31204, subdivision a, provides:

It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or

36. Corporations Code section 31204, subdivision b, provides:

37. Based upon the foregoing findings, the Commissioner is of the opinion that Guanhua Chen, Tomii Franchising, Inc., Christopher Conner, and Conner and Associates, LLC (D/B/A Franchise Marketing Systems), in violation of section 31204, knowingly altered, destroyed, mutilated, concealed, covered up, falsified, or made a false entry in a record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of the Franchise Investment Law. In addition, based upon the foregoing findings, the Commissioner is of the opinion that Guanhua Chen, Tomii Franchising, Inc., Christopher Conner, and Conner and Associates, LLC (D/B/A Franchise Marketing Systems), in violation of section 31204, knowingly made an untrue statement to the Commissioner during the course of licensing, investigation, or examination with the intent to impede, obstruct, or influence the administration or enforcement of the Franchise Investment Law. Therefore, pursuant to section 31406, Guanhua Chen, Tomii Franchising, Inc., Christopher Conner, and Conner and Associates, LLC (D/B/A Franchise Marketing Systems) are hereby cited and ordered to desist and refrain from further violations of Corporations Code section 31204.

V ADMINISTRATIVE PENALTIES

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(a) If, upon inspection or investigation, based upon a complaint or otherwise, the commissioner has cause to believe that a person is violating any provision of this division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person in writing describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$2,500) per violation and shall contain reference to this section, including the provisions of subdivision (c). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 60 days from the receipt of the citation, the person cited fails to notify the commissioner that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the commissioner. The application shall include a certified copy of the final order of the commissioner and shall constitute a sufficient showing to warrant the issuance of the judgment and order.

40. Pursuant to Corporations Code section 31406, Christopher Conner and Conner and Associates, LLC (D/B/A Franchise Marketing Systems) are hereby assessed and ordered to pay, jointly and severally, an administrative penalty of \$15,000, which consists of a penalty of \$2,500 for each of the at least six violations Corporations Code sections 31200 and 31204 recited above.

41. The administrative penalties in the amounts stated above shall be made payable to the Department of Business Oversight and submitted to Adam J. Wright, Counsel, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344, no later than 60 days from the date of this order.

VI

ANCILLARY RELIEF & FEES

42. Section 31408 provides in relevant part:

(a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this

1 division, including a stop order, a claim for ancillary relief, including, but
2 not limited to, a claim for rescission, restitution or disgorgement or
3 damages on behalf of the persons injured by the act or practice
4 constituting the subject matter of the action, and the administrative law
5 judge shall have jurisdiction to award additional relief. The person
6 affected may be required to attend remedial education, as directed by the
7 commissioner.

(b) In an administrative action brought under this part the commissioner is
entitled to recover costs, which in the discretion of the administrative law
judge may include any amount representing reasonable attorney's fees and
investigative expenses for the services rendered, for deposit into the State
Corporations Fund for the use of the Department of Corporations.

8 43. Pursuant to Corporations Code section 31408, Christopher Conner and all persons
9 employed by Conner and Associates, LLC (D/B/A Franchise Marketing Systems) who assist in
10 preparing franchise registrations or who assist in franchise selling are hereby required to attend
11 remedial education, which shall consist of eight hours of franchise law training courses per person
12 offered by instructors that are acceptable to the Commissioner. Proof of attendance of the remedial
13 education shall be submitted to Adam J. Wright, Counsel, 320 West 4th Street, Suite 750, Los
14 Angeles, California 90013-2344, no later than 90 days from the date of this order.

15 44. Pursuant to Corporations Code section 31408, subdivision (b), Christopher Conner
16 and Conner and Associates, LLC (D/B/A Franchise Marketing Systems), shall pay attorney's fees
17 and investigative expenses to the Department of Business Oversight in the amount of \$10,000.00,
18 or according to proof. The amount awarded for attorney's fees and investigative expenses shall be
19 made payable to the Department of Business Oversight and submitted to Adam J. Wright, Counsel,
20 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344, no later than 60 days from the
21 date of this order.

22 45. This order is necessary, in the public interest, for the protection of investors and
23 franchisees and consistent with the purposes, policies and provisions of the Franchise Investment
24 Law.

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1 Dated: June 17, 2015
2 Sacramento, California

JANN LYNN OWEN
Commissioner of Business Oversight

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4
5 By _____
6 MARY ANN SMITH
7 Deputy Commissioner
8 Enforcement Division
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